

Sanctions for Nursing Facilities

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the penalty or penalties unless the facility requests Administrative Review of the decision to assess the penalty or penalties. The amount of a civil monetary penalty determined through Administrative Review shall be paid within ten (10) business days of the facility's receipt of the Administrative Review decision unless the facility requests an Administrative Hearing. The amount of the civil monetary penalty determined through a hearing shall be paid within ten (10) business days of the facility's receipt of the hearing decision. Interest at the legal rate of interest established by Georgia law shall begin to run on the later of one (1) business day after:

1. the facility's receipt of notice of the penalty; or
2. the date of issuance of the Administrative Review or Hearing decision.

-Failure of a facility to pay the entire penalty as specified in this paragraph shall result in an automatic final decision and no further administrative or judicial review or hearing shall be available to the facility.

(f) Collection of civil penalties. If a facility fails or refuses to pay a penalty within the time required, the Department may collect the penalty by subtracting all or part of the penalty amount plus interest from future medical assistance payments to the facility. Additionally, the Department may subtract a fee representing the actual administrative cost of collection. Nothing herein shall prohibit the Department from obtaining judicial enforcement of its right to collect penalties and interest thereon.

(g) Imposition against individuals. Each recipient resident's functional capacity shall be assessed by the facility using an instrument specified by the Department. A civil money penalty of \$1,000 per assessment shall be imposed by the Department against any individual who willfully and knowingly certifies a material and false statement in such assessment instrument or other documents used to support the assessment. A civil money penalty of \$5,000 per assessment shall be imposed by the Department against any individual who willfully and knowingly causes another individual to certify a material and false statement in such assessment instrument or other documents used to support the assessment. Any such penalty shall be imposed by written notice to the individual according to the same provisions as set forth in Paragraphs (c) through (e) of this Section regarding deficiencies.

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(h) Use of civil monetary penalties. The Department may use collected civil monetary penalties for the following purposes:

1. protecting the health or property of residents;
2. paying costs of relocating residents;
3. maintaining the operation of a nursing facility while deficiencies are corrected or the facility is being closed; and
4. reimbursing residents for personal funds lost, which reimbursement shall not adversely affect a person's Medicaid eligibility.

Authority Ga. L. 1977, p. 384, et seq.; O.C.G.A. Sec. 49-4-142(a). **Administrative History.** Original Rule entitled "Procedure for Adoption of Rules" was filed on April 11, 1978; effective May 1, 1978. **Amended:** Filed June 18, 1979; effective July 8, 1979. **Amended:** Filed April 29, 1982; effective May 19, 1982. **Repealed:** ER. 350-3-0.3-.04 adopted. F. Oct. 5, 1989; eff. Sept. 29, 1989, the date of adoption, to remain in effect for 120 days or until adoption of a permanent Rule superseding said Emergency Rule, as specified by the Agency. **Repealed:** Permanent Rule entitled "Civil Monetary Penalties" adopted. F. Oct 4, 1989; eff. Nov. 1, 1989, as specified by the Agency.

-350-3.05 Temporary Management. The Department shall impose the remedy of temporary management in situations where it finds that there is a need to oversee operation of the facility and to assure the health and safety of the facility's residents while there is an orderly closure of the facility or while improvements are made in order to bring the facility into compliance with all Program Requirements. Temporary management shall not be imposed unless other less intrusive remedies will not result in compliance, have failed to cause the facility to achieve compliance, or the Department has found that the facility's deficiency or deficiencies immediately jeopardize the health or safety of its residents.

(a) Recommendation for appointment of temporary management. Within ten (10) business days of its completion of a survey or complaint investigation, the State Survey Agency shall deliver to the Department its written recommendation for appointment of temporary management if, in the Agency's judgment, such appointment is necessary. The recommendation shall specify the grounds upon which it is based, including an assessment of the capability of the facility's current management to achieve and maintain compliance with all Program Requirements.

(b) The decision to appoint temporary management shall be made by a person, appointed by the Commissioner, who is not the surveyor or complaint investigator who discovered the deficiencies or made the recommendation for appointment.

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(c) The Department shall give written notice to the facility of its appointment of temporary management within ten (10) business days of its receipt of a recommendation for appointment from the State Survey Agency, unless the Department determines that temporary management is not necessary. When the Department has determined that the facility's deficiency or deficiencies immediately jeopardize the health or safety of its residents, no Administrative Review shall be available and the provisions of Subsection .09(2) shall apply.

(d) Who may serve. The Commissioner may appoint any person or organization which meets the following qualifications:

1. The temporary manager shall not have any pecuniary interest in or pre-existing fiduciary duty to the facility to be managed.

2. The manager must not be related, within the first degree of kinship, to the facility's owner, manager, administrator, or other management principal.

3. The manager must possess sufficient training, expertise, and experience in the operation of a nursing facility as would be necessary to achieve the objectives of temporary management. The manager must possess a Georgia nursing home administrator's license.

4. The manager must not be an existing competitor of the facility who would gain an unfair competitive advantage by being appointed as temporary manager of the facility.

(e) Powers and duties of the temporary manager.

1. The temporary manager shall have the authority to direct and oversee the correction of Program Requirement deficiencies; to oversee and direct the management, hiring, and discharge of any consultant or employee, including the administrator of the facility; to direct the expenditure of the revenues of the facility in a reasonable, prudent manner; to oversee the continuation of the business and the care of the residents; to oversee and direct those acts necessary to accomplish the goals of the Program Requirements; and to direct and oversee regular accountings and the making of periodic reports to the Department. The temporary manager shall provide reports to the Department no less frequently than monthly showing the facility's compliance status. Should the facility fail or refuse to carry out the directions of the temporary

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manager, the Department shall terminate the facility's participation and may, at its discretion, impose any other remedies described in Section .02.

2. The temporary manager shall observe the confidentiality of the operating policies, procedures, employment practices, financial information, and all similar business information of the facility, except that the temporary manager shall make reports to the Department as provided in this section.

3. The temporary manager shall be liable for gross, willful or wanton negligence, intentional acts or omissions, unexplained shortfalls in the facility's funds, and breaches of fiduciary duty. The temporary manager shall be bonded in an amount equal to the facility's revenues for the month preceding the appointment of the temporary manager.

4. The temporary manager shall not have authority to do the following:

(i) To cause or direct the facility or its owner to incur debt or to enter into any contract with a duration beyond the term of the temporary management of the facility;

(ii) To cause or direct the facility to encumber its assets or receivables, or the premises on which it is located, with any lien or other encumbrance;

(iii) To cause or direct the sale of the facility, its assets, or the premises on which it is located;

(iv) To cause or direct the facility to cancel or reduce its liability or casualty insurance coverage;

(v) To cause or direct the facility to default upon any valid obligations previously undertaken by the owners or operators of the facility, including, but not limited to, leases, mortgages and security interests; and

(vi) To incur capital expenditures in excess of \$2,000.00 without the permission of the owner or the Commissioner.

(f) Costs. All compensation and per diem costs of the temporary manager shall be paid by the nursing facility. The Department shall bill the facility for the costs of the temporary manager after termination of

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temporary management. The costs of the temporary manager for any thirty (30) day period shall not exceed one-sixth of the maximum allowable administrator's annual salary for the largest nursing facility for Medicaid reimbursement purposes. Within fifteen (15) days of receipt of the bill, the facility shall pay the bill or request Administrative Review to contest the costs for which it was billed. Such costs shall be recoverable through recoupment from future medical assistance payments in the same fashion as a benefits overpayment. The costs of temporary management and the attorneys' fees associated with contesting such costs are not reimbursable Medicaid expenses except in the case where a facility prevails in a hearing, in which case reasonable attorneys' fees and costs shall be allowable.

(g) Termination of temporary management. The Commissioner may replace any temporary manager whose performance is, in the Commissioner's discretion, deemed unsatisfactory. No formal procedure is required for such removal or replacement but written notice of any action shall be given the facility, including the name of any replacement manager. A facility subject to temporary management may petition the Commissioner for replacement of a temporary manager whose performance it considers unsatisfactory. The Commissioner shall respond to a petition for replacement within three (3) business days after receipt of said petition. Otherwise, the Department shall not terminate temporary management until it has determined that the facility has management capability to ensure continued compliance with all Program Requirements or until the Department terminates the nursing facility's participation. A facility may petition the Department for termination of temporary management. The Department shall respond to the petition within three (3) business days after receipt.

(h) Nothing contained in this section shall limit the right of any nursing facility owner to sell, lease, mortgage, or close any facility in accord with all applicable laws.

Authority Ga. L. 1977, p. 384, et seq.; O.C.G.A. Sec. 49-4-142(a). **Administrative History.** Original Rule entitled "Adoption of Rules" was filed on April 11, 1978; effective May 1, 1978. **Repealed:** ER. 350-3-0.3-.05 adopted. F. Oct. 5, 1989; eff. Sept. 29, 1989, the date of adoption, to remain in effect for 120 days or until adoption of a permanent Rule superseding said Emergency Rule, as specified by the Agency. **Repealed:** Permanent Rule entitled "Temporary Management" adopted. F. Oct. 4, 1989; eff. Nov. 1, 1989, as specified by the Agency.

350-3-.06 Monitoring.

(1) The Department shall maintain procedures and adequate staff on-site, on a regular, as-needed basis, to monitor the facility's operations, advise the facility in its effort to come into or maintain compliance,

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to report to the licensing agency, and to investigate complaints of violations which are not easily verified on one visit.

(a) One or more monitor(s) shall be placed in the nursing facility:

1. when it has been found on three (3) standard surveys that the nursing facility has provided substandard quality of care;
2. when the facility has been under temporary management;
3. to ensure that Class A & B violations have been and continue to be corrected; or
4. when the Department has reason to question a nursing facility's compliance.

(2) The Department shall bill the facility for the expenses of monitoring at the end of the monitoring process. Within fifteen (15) days of receipt of the bill, the facility shall pay the bill or request Administrative Review to contest the costs for which it was billed. Such expenses shall be recoverable through recoupment from future medical assistance payments in the same fashion as a benefits overpayment.

(3) In the event a monitor is already in a facility pursuant to the provisions of O.C.G.A. § 31-7-2.2(b), the Department may not place a monitor in the facility.

Authority Ga. L. 1977, p. 384, et seq.; O.C.G.A. Sec. 49-4-142(a). **Administrative History.** Original Rule entitled "Imminent Threat" was filed on April 11, 1978; effective May 1, 1978. **Repealed:** ER 350-3-0.3-.06 adopted. F. Oct. 5, 1989; eff. Sept. 29, 1989, the date of adoption, to remain in effect for 120 days or until adoption of a permanent Rule superseding said Emergency Rule, as specified by the Agency. **Repealed:** Permanent Rule entitled "Monitoring" adopted. F. Oct. 4, 1989; eff. Nov. 1, 1989, as specified by the Agency.

350-3-.07 Notice.

(1) The Department shall give notice of the imposition of any remedy described in this Chapter as follows:

(a) To the facility in writing, transmitted in a manner which will reasonably ensure timely receipt by the facility.

(b) To the public by transmitting printed Notices to the facility. Such Notices shall be at least 11 1/2 inches by 17 1/2 inches in size and of sufficient legibility that they may reasonably be expected to be readable by the facility's residents or their representatives. A printed notice shall

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not be transmitted or required to be posted for a Plan of Correction.

(c) To the State Long-Term Care Ombudsman by placing copies with the U. S. Postal Service of all notices to the facility.

(d) To the State Survey Agency in writing.

(2) The facility shall post a sufficient number of the Notices described in Paragraph (1)(b) in places readily accessible and visible to residents and their representatives, including but not limited to entrances, exits, and common areas, to effectively advise all present and prospective residents of the remedies which are being imposed. The Notices shall remain in place until all remedies are officially removed by the Department. Failure of a facility to comply with notice posting requirements shall constitute a Class B deficiency.

(3) A facility shall post a Notice of Administrative Hearing date, time, and location whenever the facility has requested and been granted a hearing on imposition of a remedy. The notice shall be at least 11 1/2 inches by 17 1/2 inches in size and of sufficient legibility that it may reasonably be expected to be readable by the facility's residents or their representatives. The notice shall be placed in an area readily accessible and visible to residents and their representatives.

(4) The Department shall notify the attending physician of each resident with respect to whom a finding of substandard quality of care has been made, as well as the Board of Nursing Home Administrators, by transmitting to them copies of the survey or complaint investigation reports and any notice to the facility that a remedy has been imposed. The Department also may notify any other professional licensing boards, as appropriate.

(5) Failure of the Department to effect notice as required in Subsections (1)(b), (c), (d), or (4) shall not be grounds for the facility to contest any action taken under this Chapter.

(6) All nursing facilities shall advise staff of the penalties for making false statements or causing another person to make false statements in a resident assessment. A facility must document the manner in which staff are advised of the provisions of Rule 350-3-.04(g).

(7) The Department shall compile a list of facilities against which

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remedies other than a Plan of Correction have been imposed. The list shall be prepared monthly and be available upon request. The list shall contain the names and addresses of only those facilities which did not contest imposition of remedies or against which imposition was upheld upon appeal, and shall describe the remedies imposed.

Authority Ga. L. 1977, p. 384, et seq.; O.C.G.A. Sec. 49-4-142(a). **Administrative History.** Original Rule entitled "Effective Date of Rules" was filed on April 11, 1978; effective May 1, 1978. **Repealed:** ER. 350-3-0.3-.07 adopted. F. Oct. 5, 1989; eff. Sept. 29, 1989, the date of adoption, to remain in effect for 120 days or until adoption of a permanent Rule superseding said Emergency Rule, as specified by the Agency. **Repealed:** Permanent Rule entitled "Notice" adopted. F. Oct. 4, 1989; eff. Nov. 1, 1989, as specified by the Agency.

350-3.08 Administrative Review.

(1) Should the facility wish to contest imposition of a remedy, other than a Plan of Correction and except as provided in Sections .03(e) and .05(c), a written request for Administrative Review must be received by the Department within ten (10) days of the facility's receipt of notice of imposition of the remedy. The request shall state specifically each remedy disputed and, for each disputed remedy, the specific basis of the dispute. For imposition of civil monetary penalties, it shall not be a valid basis for dispute that a deficiency no longer exists. The timely filing of a request shall stay imposition of the remedy pending the Administrative Review decision, except where the Department has determined there is immediate jeopardy to the health or safety of the residents in a facility, in which case the Department may impose the remedies described in Subsections .02(b), (g) or (h), as determined appropriate by the Department. If the facility fails to file a timely request, the decision to impose a remedy or remedies shall become final and no further administrative or judicial review or hearing shall be available.

(2) The reviewing official shall be a Department employee appointed by the Commissioner and shall have authority only to affirm the decision, to revoke the decision, to affirm part and to revoke part, to order an immediate survey of the facility, to change the classification of the civil monetary penalty (for example, from A to B), or to request additional information from the State Survey Agency, the facility, or both, the Long-Term Care Ombudsman, or the family or resident council of the facility. Additional information that is requested must be supplied within ten (10) business days from the date of notice to the party of whom it is requested. Reviewing official shall be without authority to compromise the dollar amount of any civil monetary penalty within a deficiency class.

(3) The Department shall issue a written decision within ten (10)

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business days of its receipt of the request for Administrative Review. The Review shall be made solely on the basis of the State Survey Agency recommendation, the survey report, the statement of deficiencies, any documentation the facility submits to the Department at the time of its Request, and information received as a result of a request made by the reviewing official. For the purposes of such Review, a hearing shall not be held and oral testimony shall not be taken. Correction of a deficiency or deficiencies shall not be a basis for favorable reconsideration of imposition of civil monetary penalties.

Authority Ga. L. 1977, p. 384, et seq.; O.C.G.A. Sec. 49-4-142(a). **Administrative History.** Original Rule entitled "Promulgation of Rules" was filed on April 11, 1978; effective May 1, 1978. **Repealed:** ER. 350-3-0.3-.08 adopted. F. Oct. 5, 1989; eff. Sept. 29, 1989, the date of adoption, to remain in effect for 120 days or until adoption of a permanent Rule superseding said Emergency Rule, as specified by the Agency. **Repealed:** Permanent Rule entitled "Administrative Review" adopted. F. Oct. 4, 1989; eff. Nov. 1, 1989, as specified by the Agency.

350-3-.09 Administrative Hearing.

(1) Should the facility wish to appeal the Administrative Review decision for remedies described in Subsections .02(a), (b), (c), (g), and (h), and for Subsection (d) where no determination of immediate jeopardy has been made, it may request an administrative hearing. Subsequent correction of a deficiency or deficiencies shall not constitute a defense to the imposition of a remedy or remedies. The hearing request shall state specifically which portion(s) of the Administrative Review decision the facility contests. A hearing shall be granted only if Administrative Review was timely requested, and a written request for a hearing has been received by the State Survey Agency within ten (10) business days of the facility's receipt of the Administrative Review decision. Failure to file a timely request shall result in the Administrative Review decision becoming final, and no further administrative or judicial review or hearing shall be available.

(2) If the Department has imposed temporary management pursuant to the provisions of Subsection .05(c), or imposed either of the remedies specified in Subsection .02(e), the facility shall be entitled to a hearing which shall commence not less than five (5) nor more than ten (10) days after the facility's receipt of notice of imposition of said remedy or remedies. No Administrative Review shall be conducted in such cases and no request for hearing shall be required. The date, time, and location of the hearing shall be included in the Notice of imposition of the remedy or remedies. A facility may waive its right to a hearing by written notice to the State Survey Agency.

(3) Except for appointment of a temporary manager (unless the

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Department has determined that immediate jeopardy to the health or safety of a facility's residents exists), termination of a facility's participation, closure of a facility, or payment of civil monetary penalties, the imposition of remedies shall not be stayed during the pendency of any hearing.

Authority Ga. L. 1977, p. 384, et seq.; O.C.G.A. Sec. 49-4-142(a). **Administrative History.** Original Rule entitled "Public Notice" was filed on April 29, 1982; effective May 19, 1982. **Repealed:** ER. 350-3-0.3-.09 adopted. F. Oct. 5, 1989; eff. Sept. 29, 1989, the date of adoption, to remain in effect for 120 days or until adoption of a permanent Rule superseding said Emergency Rule, as specified by the Agency. **Repealed:** Permanent Rule entitled "Administrative Hearing" adopted. F. Oct. 4, 1989; eff. Nov. 1, 1989, as specified by the Agency.